BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

GARY W. HODGES Claimant	}
VS.	Decket No. 100 702
BRATTON STEEL CORPORATION) Docket No. 189,793
Respondent AND	
BUILDERS' ASSOCIATION SELF INSURERS' FUND, CO. Insurance Carrier	

ORDER

ON December 8, 1994, the Appeals Board heard respondent's request to review the Preliminary Hearing Order entered by Administrative Law Judge James R. Ward, dated September 1, 1994.

APPEARANCES

Claimant appeared by his attorney, Frank S. Eschmann of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Wade A. Dorothy of Lenexa, Kansas. There were no other appearances.

Issues

The Administrative Law Judge granted claimant's request for medical and temporary total disability benefits. The respondent and insurance carrier contend the Administrative Law Judge exceeded his jurisdiction by awarding temporary total disability benefits for a period claimant had received unemployment compensation. That is the issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds as follows:

At this juncture of the proceeding, the Appeals Board lacks jurisdiction to review the issue of whether the Administrative Law Judge erred in granting claimant temporary total disability benefits for the period in question.

For purposes of preliminary hearing, the parties agree claimant has suffered an accidental injury arising out of and in the course of his employment with the respondent. The question whether claimant's accidental injury has rendered him temporarily and totally

unable to work deals with the issue of nature and extent of injury rather than one of the jurisdictional issues enumerated in K.S.A. 44-534a, as amended.

The Legislature empowered the Appeals Board under K.S.A. 44-534a to review preliminary findings pertaining to the following: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; and, (4) whether certain defenses apply. Nature and extent is not a preliminary finding that the Appeals Board may review. Further, the Administrative Law Judge has not exceeded his jurisdiction and authority; therefore, the Appeals Board does not have jurisdiction to review this preliminary hearing order under K.S.A. 44-551. This ruling comports with many of our earlier decisions.

If not resolved, the issue raised by the respondent and insurance carrier may be reviewed by the Appeals Board at the time of final award upon proper application.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge James R. Ward, dated September 1, 1994, remains in full force and effect.

II IO OO ONDERED.
Dated this day of December, 1994.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Frank S. Eschmann, Topeka, KS Wade A. Dorothy, Lenexa, KS James R. Ward, Administrative Law Judge George Gomez, Director

IT IS SO ORDERED